IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 240 of 1993.

Judgment reserved on: 22.10.2007

Date of Decision: November 5 , 2007

M/s Oriental Insurance Co. … Appellant

Versus

M/s Bhagwati Timber & Flour Mills … Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting? No

For the Appellant : Mr. G.C.Gupta, Sr.Advocate with Mr.Mohinder Gautam, Advocate.

For the Respondent(s) : Mr. K.D.Sood, Advocate.

Deepak Gupta, J

This appeal under Section 39 of the Arbitration Act is directed against the judgment passed by a learned Single Judge of this Court whereby he has dismissed the objections filed by the appellant-Insurance Company against the award made by the Arbitrator, Shri A.K.Goel, who was then practicing as an Advocate of this court.

The brief facts of this case are that the respondent (hereinafter referred to as the claimant) was running a business under the name and style of M/s Bhagwati Timber Oil and Flour

Mills at Solan. The building along with machinery and stocks were insured with the appellant-Insurance Company. On 11.2.1989 at about 6.30 p.m. a fire broke out in the premises and damage was caused. Thereafter the appellant-Insurance Company appointed surveyors to visit the site and assess the loss. The surveyors visited the site on 14.2.1989, 23.2.1989, 28.2.1989 and 17.4.1989. There were two surveyors who had been jointly appointed. One was Mr. N.K.Gupta, Chartered Accountant, and the other was M/s Mita Marine and General Survey Agencies (P) Ltd. They submitted a joint report assessing the total loss at Rs. 4,20,204.87 paise. It appears that the Insurance Company raised certain queries with regard to the first report and the surveyors on 26.9.1989 furnished their second assessment report wherein the loss was assessed at Rs. 2,58,334.73 paise. The main difference was in the assessment of the value of the stocks which were initially assessed at Rs. 3,20,875.31 paise, but later on assessed at Rs. 1,59,005.17 paise. This amount was offered to the claimant who did not accept the same.

On dispute having been raised, the matter was referred to the Arbitrator Shri A.K.Goel, who was then practicing as an Advocate of this Court. The parties submitted their claim reply etc. and led evidence. The Arbitrator vide his award dated 3.9.1991 awarded a sum of Rs. 3,20,875.31 paise as the value of the stocks since there was no dispute with regard to the assessment of loss caused to the building and machinery. However, no interest was awarded. Aggrieved against the said award, both the parties filed objections before the learned Single Judge. Objections of the appellant-Insurance Company were disallowed and objections of

the claimant in relation to interest only were partly allowed. The learned Single Judge remitted the award to the Arbitrator and directed him to make an award of interest also and thereafter the award of interest has been made which is not under challenge.

We have heard Shri Gian Chand Gupta, learned Senior Advocate for the appellant-Insurance Company and Shri K.D.Sood, learned counsel for the respondent/claimant.

The main ground raised by Shri Gian Chand Gupta is that the learned Arbitrator as well as the learned Single Judge have gravely erred in holding that the second report dated 26.9.1989 has not been properly proved and, therefore, cannot be taken into account. He submits that both the reports were only tendered in evidence and neither the claimant nor the Insurance Company had examined the surveyors. It is further contended that the second report of the surveyors clearly shows that the claim of the claimant insofar as it related to loss of Sarson bags was totally false and fraudulent since there were no traces of Sarson, Sarson bags or Sarson oil at site of fire and as such the claim of Sarson was rightly rejected. He has also contended that the assessment of the loss of wheat especially supplied under the Public Distribution System (PDS) is on the higher side.

At the outset we may note that the intervention of the court in Arbitral awards should be the barest minimum. However, we are in agreement with Shri G.C.Gupta, Senior Advocate, that the second report of the surveyor could not have been totally ignored. In fact, though both, the learned single Judge as well as the Arbitrator held that the second report has not been proved they

have dealt with the same and have given other reasons also for not accepting the second report of the surveyor. It would be pertinent to mention that with regard to assessment of loss, the claimant has virtually not produced any other evidence and has only relied upon the report of the surveyors dated 6.6.1989 which is exhibited as Ex.PW4/E. This report has been placed on record by the claimant.

The respondent also examined a number of witnesses and RW1 Shri Milap Chand, AAO of the Company proved on record the second report of the surveyors dated 26.9.1989. The procedure followed for placing on record the report was virtually identical and we feel that either both the reports should have been read in evidence or both should have been discarded.

The first report dated 1.6.1989 is a very detailed report. In this report, the surveyors have dealt with all aspects of the matter and have also dealt with Sarson oil and Sarson as separate commodities. The surveyors did not find any stock of sarson in the premises nor did they find any traces of sarson or sarson oil there. However, after taking into consideration, the account books and by taking into consideration the various purchases of sarson etc made by the claimant and the record of production and the record of sale, the surveyors reached the conclusion that as on 10.2.1989 the total stock of sarson lying in the premises was of the value of Rs.1,20,661.30 paise and after reducing the value of salvage, they have assessed the loss at Rs. 1,16,893.25.

It appears that after the surveyors submitted their first report, some queries with regard to the report were raised by the

Insurance Company and thereafter the surveyors furnished the second report in which they did not assess any loss for sarson and the assessment of loss of PDS wheat was reduced from Rs.2,36,583.62 paise to Rs. 1,52,240. 39 paise.

Unfortunately, both the parties did not deem it fit to examine the surveyors. The surveyors had filed their first detailed report which clearly shows that the loss was assessed after taking into consideration the books of account, the statement of stocks, the stock register, accounts of the claimants, their records with the Bank, cash books, sale books, ledger, purchase bills, allotment letter of wheat as well as details of sale and the details of sales tax paid etc. A very detailed report was given while assessing the loss. There is no manner of doubt that the Insurance company is not bound by the report of the surveyors but can raise objections to their assessment. However, it was for the Insurance Company to have proved what were the doubts it had and what were the queries it had raised. For reasons best known to the company, the second report was only placed on record. The Insurance Company was in the best position to examine the surveyors who could have explained why while giving second report, they deviated from the first report. The second report Ex.R1 gives no reason except to state that they did not find any sarson, sarson bags, and traces of sarson oil in the factory. These facts had already been noted by them in their first report and yet they have made an assessment for the loss of sarson.

As stated above, in the first report the loss was assessed on the basis of the documentary record. Why was this record not

relied upon in the second report? There is no explanation forth coming.

With regard to the assessment of PDS wheat being reduced from Rs.2,36,583.62 to Rs. 1,52,240/- there is no explanation whatsoever in the second report. It has been urged that this is probably due to the fact that the rate of wheat has been lowered from Rs.350/- per quintal to Rs. 204/- per quintal, which was the rate at which wheat was being supplied under PDS. However, this is not stated in the second report.

It is well settled law that the appreciation of evidence has to be done by the Arbitrator alone and the Court cannot interfere in the judgment of the Arbitrator unless there is something perverse or some material evidence has been totally ignored. In the present case, we find that both the learned Single Judge and the Arbitrator have dealt with the matter in detail. After keeping in view the entire evidence, they have held and we feel rightly so that no reliance can be placed on the second report of the surveyors. The Insurance Company failed to produce any material to show what were the circumstances which necessitated the filing of the second report by the surveyors. The Insurance Company may have the right to put queries to the Surveyors but the company should have produced all this material before the Arbitrator. It would have been much more appropriate if the Insurance Company had examined the surveyors which they also failed to do so. It was only the surveyors who could have explained the reasons for giving two contradictory reports.

Keeping in view the aforesaid facts, we find no merit in this appeal and the same is accordingly dismissed with no order as to costs.

(Deepak Gupta), J.

November 5 , 2007 (V.K.Ahuja), J.

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